



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R08-OAR-2021-0187; FRL-10024-23-Region 8]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions from Existing Municipal Solid Waste Landfills; Control of Emissions from Existing Commercial and Industrial Solid Waste Incineration Units; Negative Declaration of Existing Hospital/Medical/Infectious Waste Incineration Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA or the “Act”) section 111(d) state plan submitted by the North Dakota Department of Environmental Quality (NDDEQ or the “Department”) on July 28, 2020 for the control of air pollutants from existing municipal solid waste (MSW) landfills. The EPA is also approving a CAA section 111(d)/129 state plan submitted by the Department on the same date for the control of air pollutants from existing commercial and industrial solid waste incineration (CISWI) units and air curtain incinerator (ACI) units. The North Dakota state plans establish performance standards and operating requirements for existing MSW landfills, CISWI units and ACI units within the State of North Dakota and provide for the implementation and enforcement of those standards and requirements by the Department. Finally, the EPA is also approving withdrawal of the North Dakota CAA section 111(d)/129 state plan for the control of air pollutants from existing hospital/medical/infectious waste incineration (HMIWI) units. The EPA is approving this plan withdrawal following North Dakota’s May 8, 2019 submittal of a negative declaration of existing HMIWI units in the State of North Dakota, and will be promulgating the State’s negative declaration in lieu of a CAA section 111(d)/129 state plan for HMIWI units. The EPA is taking these actions pursuant to requirements of the CAA.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0187. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-TRM, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6396, email address: [lohrke.gregory@epa.gov](mailto:lohrke.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our March 26, 2021 proposed rule (86 FR 16173). In that document we proposed to approve the North Dakota CAA section 111(d) state plan for existing MSW landfills and the North Dakota CAA section 111(d)/129 state plan for existing CISWI units as the plans were submitted by the NDDEQ on July 28, 2020. That document also proposed approval of the North Dakota withdrawal of a previously approved CAA section 111(d)/129 state plan for existing HMIWI units and publication of the State’s negative declaration of existing HMIWI units in lieu of a state plan. The EPA’s analysis of the two North Dakota state plans and the negative declaration of designated sources may be found in

the aforementioned proposed rule and the technical support document (TSD) associated with the docket for today's action. Comments on the EPA's proposed approvals of the state plans for existing CISWI units and MSW landfills and approval of the negative declaration in lieu of a state plan for existing HMIWI units were due on or before April 26, 2021. We received no comments on our proposed actions. Therefore, the EPA will proceed with these plan approvals without changes.

## **II. Final Action**

The EPA is finalizing approval of the North Dakota section 111(d) state plan for existing MSW landfills pursuant to 40 CFR part 60, subparts B and Cf. We are also finalizing approval of the North Dakota section 111(d)/129 state plan for existing CISWI units pursuant to 40 CFR part 60, subparts B and DDDD. Finally, we are finalizing approval of the State's negative declaration of existing HMIWI units in lieu of a state plan for such units as designated by 40 CFR part 60, subpart Ce. Therefore, the EPA is amending 40 CFR part 62, subpart JJ to reflect this approval action. This approval is based on the rationale provided in section II of the proposed rule for this action (86 FR 16173) and discussed in detail in the TSD associated with this rulemaking action.<sup>1</sup> The scope of this approval is limited to the provisions of 40 CFR parts 60 and 62. The EPA's proposed approval of the two North Dakota plans is limited to those MSW landfills that meet the criteria established in 40 CFR part 60, subparts Cf and those CISWI units and ACI units that meet the criteria established in 40 CFR part 60, subpart DDDD.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c). The EPA Administrator also retains those authorities related to designated CISWI and ACI units that will not be delegated to state, local or tribal authorities as listed in 40 CFR 60.2542.

## **III. Incorporation by Reference**

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<sup>1</sup> EPA Document ID No. EPA-R08-OAR-2021-0187-0002, available at [www.regulations.gov](http://www.regulations.gov).

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of subparts Cf and DDDD of chapter 33.1-15-12, section 2 of the North Dakota Administrative Code (NDAC) as effective on July 1, 2020. Subparts Cf and DDDD are part of the North Dakota CAA section 111(d) state plan applicable to existing MSW landfills and the section 111(d)/129 state plan for existing CISWI units, respectively. The regulatory provisions of these sections of the NDAC incorporate the required 111(d) and 111(d)/129 state plan elements required by the emission guidelines (EG) for existing MSW landfills and CISWI units promulgated at 40 CFR part 60, subparts Cf and DDDD. The incorporations establish emission standards and compliance times for the control of air pollutants from certain MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014 and designated CISWI and ACI units that commenced construction on or before June 4, 2010 or commenced modification or reconstruction no later than August 7, 2013. The emissions standards and compliance times established within these NDAC sections and the North Dakota state plans are at least as stringent as those required by the EG for existing MSW landfills and CISWI units. The EPA has made, and will continue to make, NDAC section 33.1-15-12-02 (as well as the North Dakota state plan documents for existing MSW landfills and CISWI units) generally available electronically through [www.regulations.gov](http://www.regulations.gov), Docket No. EPA-R08-OAR-2021-0187 and in hard copy at the EPA Region 8 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B, Cf and DDDD; and 40 CFR part 62, subpart A.

Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations.

Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) Plans are not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state. As such, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), and it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial and industrial solid waste incineration, Hospital medical and infectious waste incineration, Incorporation by reference, Intergovernmental relations, Methane, Municipal solid waste landfill, Reporting and recordkeeping requirements.

Dated: \_\_ June 28, 2021.

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Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.

40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR  
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart JJ—North Dakota**

2. Revise §§ 62.8600, 62.8601, and 62.8602 to read as follows:

**§ 62.8600 Identification of plan.**

Section 111(d) State Plan for Municipal Solid Waste Landfills and the associated State regulations contained in the North Dakota Administrative Code (NDAC) at 33.1-15-12-02, subpart Cf (incorporated by reference, see §62.8700), submitted by the State on July 28, 2020.

**§ 62.8601 Identification of sources.**

The plan applies to all existing municipal solid waste landfills under the jurisdiction of the North Dakota Department of Environmental Quality for which construction, reconstruction, or modification was commenced on or before July 17, 2014, and are subject to the requirements of 40 CFR part 60, subpart Cf.

**§ 62.8602 Effective date.**

The effective date of the plan for existing municipal solid waste landfills is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

3. Revise § 62.8610 to read as follows:

**§ 62.8610 Identification of plan—negative declaration.**

The State of North Dakota submitted a letter on May 8, 2019 certifying that there are no designated facilities subject to the emission guidelines for existing hospital medical infectious waste incinerators under 40 CFR part 60, subpart Ce operating within the State's jurisdiction.

**§§ 62.8611 and 62.8612 [Removed]**

4. Remove §§ 62.8611 and 62.8612.



5. Revise §§ 62.8630, 62.8631, and 62.8632 to read as follows:

**§ 62.8630 Identification of plan.**

Amended section 111(d)/129 State Plan for Commercial and Industrial Solid Waste Incineration Units and the associated State regulations contained in the North Dakota Administrative Code (NDAC) at 33.1-15-12-02, subpart DDDD (incorporated by reference, see §62.8700), submitted by the State on July 28, 2020.

**§ 62.8631 Identification of sources.**

The plan applies to all existing commercial and industrial solid waste incineration units and air curtain incinerators under the jurisdiction of the North Dakota Department of Environmental Quality for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced no later than August 7, 2013, and are subject to the requirements of 40 CFR part 60, subpart DDDD.

**§ 62.8632 Effective date.**

The effective date of the plan for existing commercial and industrial solid waste incineration units is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

6. Add an undesignated center heading and §62.8700 to read as follows:

*Incorporation by Reference*

**§ 62.8700 Incorporation by reference.**

(a) The material incorporated by reference in this subpart was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material may be inspected or obtained from the EPA Region 8 office, 1595 Wynkoop Street, Denver, CO 80202-1129, 303-312-6312 or from the other sources listed in this section. It may also be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(b) State of North Dakota, Legislative Council, 600 E Boulevard Ave, Bismarck, ND 58505-0360, (701) 328-2916, <https://legis.nd.gov/agency-rules/north-dakota-administrative-code>; North Dakota Administrative Code (NDAC).

(1) NDAC 33.1-15-12-02, subpart Cf., Title 33.1 North Dakota Department of Environmental Quality, Article 33.1-15 Air Pollution Control, Chapter 33.1-15-12 – Standards of Performance for New Stationary Sources, Section 33.1-15-12-02 Standards of performance, Subpart Cf – Emission guidelines and compliance times for municipal solid waste landfills, effective July 1, 2020; IBR approved for §62.8600.

(2) NDAC 33.1-15-12-02, subpart DDDD. Title 33.1 North Dakota Department of Environmental Quality, Article 33.1-15 Air Pollution Control, Chapter 33.1-15-12 – Standards of Performance for New Stationary Sources, Section 33.1-15-12-02 Standards of performance, Subpart DDDD – Emission guidelines and compliance times commercial and industrial solid waste incineration units, effective July 1, 2020; IBR approved for § 62.8630.

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